

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5974 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

DADUJI MULSANGJI

Versus

STATE OF GUJARATS

Appearance:

THROUGH JAIL for Petitioner

RULE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 05/11/1999

ORAL JUDGEMENT

#. Petitioner Daduji Mulsangji who is detained under PASA and committed at Bhavnagar Jail had moved the present petition through jail and has prayed for legal aid. However, as no advocate is assigned till today Advocate Mr. Vijay Patel is appointed as amicus curiae.

#. The detention order dtd.4.2.99 passed by the respondent no.2 Dist. Magistrate Mahesana in exercise of

power conferred under Sec.3 (1) of the Gujarat Prevention of Anti Social Activity 1985 ("PASA" for short) is challenged in the present proceeding under Sec.226 of Constitution of India.

#. The grounds of detention produced from the record of learned A.G.P. interalia disclose the facts that two criminal cases registered against the petitioner on 13.7.97 and 20.10.98 respectively for the offence made punishable under Secs.324 and 325 of I.P.C. etc. Further more, five witnesses on assurance of anonymity have given information against the petitioner vide their statement dtd.2.12.98 and 3.12.98 respectively. That in consideration of said material, respondent no.2 has come to conclusion that the petitioner is a "dangerous person" within the meaning of Sec.2(c) of PASA. That enforcement of general provision of law is not sufficient to prevent the petitioner from continuing his anti social activity which is prejudicially affecting the maintenance of public order and as such detention order is necessary and hence impugned order is passed.

#. The learned advocate Mr.Patel has assailed the order on numerous grounds. It is contended that while passing the impugned order, the detaining authority has failed to consider the less drastic remedy like claiming of cancellation of bail available under Sec.437 (5) of Cr.P.C. in a pending case against the petitioner. On account of the non application of mind, the subjective satisfaction reached by the detaining authority has been vitiated and has rendered impugned order invalid.

#. In the matter of Zubedabibi Rasidkhan Pathan Vs. State of Gujarat & Ors reported vide 1995 (2) G.L.R. P.1134 Division Bench of this court has expressed the view that non consideration of less drastic remedy like cancellation of bail available under Sec.437 (5) of Cr.P.C. amounts non application of mind vitiating the detention order. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No.1056/99 decided on 15.9.99 by this court (Coram : C.K.Thakkar. & A.L.Dave. JJ).

#. On scrutiny of grounds of detention, it appears that that detaining authority has merely observed that petitioner having been released on bail, he is likely to indulge into his anti-social activity and as such impugned order is necessary. The said ground does not indicate anywhere that detaining authority has ever considered the aspect of availability of less drastic remedy of claiming cancellation of bail. In view of the

same, the subjective satisfaction reached by the petitioner having been vitiated the impugned order is rendered invalid.

#. As the petition succeed on the above stated ground alone, it is not necessary to consider the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dtd.4.2.99 passed by the respondent no.2 against the petitioner is hereby quashed and set-aside. The petitioner Daduji Mulsangji is ordered to be set at liberty forthwith, if not required in any other case.

#. Rule to that extent made absolute.

kks.